XLHC—78

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.308 of 2005

APPELLANT (In Jail)	:	Rewa Ram Rathore, S/o Shri Ganga Ram Rathore, aged about 32 years, R/o – Mukta (Bhatapara), O.P. – Hardi Bazar, P.S. – Kusmunda, Distt. – Korba (CG)
	Versus	
RESPONDENT	:	State of Chhattisgarh Through : P. S. Kusmunda, Distt. Korba (CG)

Present:

Ms. Sangeeta Mishra, counsel for the appellant.

Mr. Sandip Yadav, Dy. GA for the State/respondent.

ORAL JUDGMENT

(6th December 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 22nd March 2005 passed in S.T.No. 55/04 whereby learned Sessions Judge, Korba has convicted the appellant under Section 304-I of the IPC and sentenced him to undergo RI for ten years, pay a fine of Rs.3,000/- and in default of payment of fine to undergo additional RI for two years.

2. Case of the prosecution in brief is that on 24.8.2004 Sukulram (since deceased) and his wife Indirabai had gone to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

work in their field whereas their daughters namely Ahilya and Rekha were at home. There was some quarrel between Roshni - daughter of the appellant and Ahilya-daughter of the deceased, whereupon wife of the appellant abused Ahilya (PW-4). In the evening when Sukulram and his wife Indirabai (PW-3) complained about this to the accused, the accused and his wife started abusing them and the accused assaulted deceased Sukulram with knife on the left portion of his chest, as a result of which he died. Report of the incident was lodged by Bandhanram (PW-6), brother of the deceased in Police Outpost Hardi Bazar, Korba at about 20.10 hours vide Ex.P/5. Thereafter, merg intimation (Ex.P/15) was given by Bandhanram (PW-6) at about 20.15 hours on the same day. Inquest over the person of the deceased was prepared vide Ex.P/7. The dead body was sent for autopsy to Primary Health Center, Hardi Bazar where Dr. A.N. Kanwar (PW-1) conducted postmortem and gave his report of Ex.P/1. The weapon of offence knife seized during investigation was sent for examination and report of the doctor is Ex.P/2. Accused Rewaram was also sent for medical examination and his injury report is Ex.P/3. Spot map of Ex.P/4 was prepared by Halka Patwari.

3. After completing investigation charge sheet was filed against the accused in the Court of Judicial Magistrate First

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Class, Katghora who in turn committed the case to the Court of Sessions Judge, Korba for trial.

4. During trial the prosecution examined 12 witnesses in all. Thereafter, statement of the accused was recorded in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He has stated that on the date of incident he was at his home due to fever. On account of quarrel between the children, deceased Sukulram entered in his home, dragged him out and at that time wife of the deceased caught him and the deceased assaulted him with club. Thereafter, deceased Sukulram tried to attack him with the knife and while he (the accused) was trying to defend himself, the knife struck the deceased. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph -1 of this judgment.

5. Learned counsel for the appellant submits that conviction of the appellant is based on the statements of Bandhanram – brother of the deceased, Indirabai – wife of the deceased, Rekha & Ahilya – daughters of the deceased. They are all highly interested witnesses. The statement of independent witness was not recorded and they have not even been produced during trial. From perusal of the statement of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

alleged eyewitnesses it would be evident that in fact they had not seen the incident and they are not the witnesses of truth. Even complainant Bandhanram resides at a distance and he had not seen the incident himself. However, learned trial Court relying upon the statements of these witnesses, which is full of discrepancy, has held the appellant guilty. It is further contended that the incident occurred in the house of the appellant as the deceased Sukulram had gone to his house and beaten him with club and under the sudden provocation the appellant had given only one knife blow on the left portion of the chest of deceased Sukulram. The appellant was also medically examined by the doctor, who has noticed simple injuries on his person. It is further argued that looking to the totality of the circumstances sentence of 10 years' RI and fine of Rs.3,000/- is too excessive and same should be suitably reduced.

6. On the other hand, learned counsel for the State supported impugned judgment of the trial Court.

7. Dr. A.N. Kanwar (PW-1) has conducted postmortem over person of the deceased and gave his report of Ex.P/1, in which he found one stab wound of size 8 cm x 3 cm x 9 cm over left side of the chest 3 cm below and lateral to nipple in the 5th intercostal space. On internal examination, he found puncture wound present in the left lung. He has opined that cause of

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ५८	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

death was shock due to haemorrhage as a result of injuries to vital organ. Thus, in view of the report of Dr. A.N. Kanwar homicidal death of Sukulram is established.

8. Conviction of the appellant is based on the statements of PW- 6 Bandhanram – brother of the deceased, PW-3 Indira Bai– wife of the deceased, PW-4 Ahilya and PW-5 Rekha, daughters of the deceased.

9. PW-3 Indirabai is the wife of deceased Sukulram. In her deposition she has stated that on return from the field she and her husband Sukulram were informed by the children that there was a quarrel between Roshni and Ahilya and they were beaten and abused by them. However, her husband went to graze his buffalos. As soon as she came out of her house, the appellant and his wife caught her and started abusing and dragged her towards their home. At that juncture, wife of the appellant also beat her children and herself. When her husband intervened, wife of the appellant picked up a club and assaulted her husband. However, he was able to ward off the blow. At that time Rewaram assaulted her husband with knife, which struck on his chest, as a result of which he fell down and died on the spot. The knife probably struck his stomach or the left side of his chest. In paragraph 7 she has admitted that there was some quarrel between her and wife of the appellant, as a result of which she fell on the ground and

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became unconscious. She has further stated that at the time of incident Ramgopal, Gayatri, both her daughters Rekha & Ahilya and one Jamunnisha were present and complainant Bandhanram resides at a distance. When she regained consciousness her husband was already dead. Some omissions have also been pointed out in her diary statement of Ex.D/1.

10. PW-4 Ahilya is eight year old daughter of the deceased. She has stated that there was a quarrel between her and Roshni – daughter of the appellant and on this wife of the appellant abused her in the morning with filthy language. In the evening also the appellant and his wife beat them and quarreled with her mother. Rewa assaulted his father with knife. Though she has claimed to have seen the incident, however, in paragraph – 6 of her statement she has stated that when she came out of the house, she found her father lying and she was informed by her grand-father (Baba) that Rewaram has assaulted her father with knife.

11. PW-5 Rekha has also given the same background in which the incident occurred and has stated that when her father returned with buffalos, the appellant and his wife stated assaulting him with knife and club. The appellant assaulted her father with knife, as a result of which he died. In paragraph 3 she has stated that she was inside the house when her father

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was assaulted. However, in the same breath she has stated that she was outside the house. She has denied the suggestion that she is deposing as tutored by her mother and grand-father. She has further stated that the accused assaulted her father with knife from its blade side.

12. PW-6 Bandhanram has also stated that he reached the place of incident on being called by his son Ramgopal that Indirabai and Rewaram are fighting with each other. At that time Rewaram took out knife from his pocket and assaulted Sukulram on the left side of his chest, as a result of which he fell on the ground and died. In the lengthy cross-examination of this witness, he has stuck to his claim that he saw the appellant assaulting his brother with knife.

13. PW-7 Pawan Kumar, who was also an eyewitness of the incident has turned hostile.

14. If we closely examine the statements of Bandhanram, Indirabai, Rekha and Ahilya, it leaves no room to doubt that there was some quarrel between the children of the appellant and deceased in the morning of the incident. In the evening also there was some quarrel and scuffle between wife of the appellant and wife of the deceased in relation to the same quarrel between the children and at that juncture when the deceased intervened the appellant gave a knife blow on the left

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side of his chest, resulting in his instantaneous death. From the injury report of the appellant it is also clear that he also sustained some simple injuries in the same incident. However, the manner in which the appellant assaulted the deceased on the left side of his chest clearly reveals that the appellant had given the knife blow with the knowledge that it could cause death of Sukulram though there was no premeditation or planning for the same and the incident occurred on the spur of moment due to sudden provocation. However, there was no grave apprehension in the mind of the appellant to his life so that he could claim that the assault was made by him in his right of private defence.

15. For the foregoing reasons, this Court is of the considered opinion that the trial Court on the basis of material available on record has correctly held that the offence committed by the appellant falls within Exception 4 of Section 300 of the IPC and accordingly, convicted him under Section 304-I of the IPC.

16. Now coming to the question of sentence imposed upon the appellant. Taking into consideration the circumstances in which this unfortunate incident occurred and also considering the fact that the appellant gave a single knife blow to the deceased and did not repeat the blow, ends of justice would be served if the sentence is modified and reduced to six years' rigorous imprisonment.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	17. In the result, the appeal is partly allowed. While maintaining conviction of the appellant under Section 304-I of the IPC, the sentence of 10 years' RI and fine of Rs.3,000/- imposed upon the appellant by the trial Court is hereby modified and in place thereof, he is sentenced to 6 years' RI and pay a fine of Rs.1,000/-, in default of payment of fine to undergo additional RI for three months. **Sd/-** **Dhirendra Mishra** **Judge**	

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